

IN THE MATTER OF	:	BEFORE THE
<b>MATTHEW AND GAIL</b>	:	HOWARD COUNTY
<b>LOEFFLER</b>	:	BOARD OF APPEALS
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 08-010V

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### **DECISION AND ORDER**

On April 14, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Matthew and Gail Loeffler for a variance to reduce the 50-foot front setback from a public street right-of-way ("ROW") to 39.4 feet for a garage in an R-20 (Residential: Single) zoning district, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Ronald S. Schimel, Esquire, represented the Petitioners. Matthew Loeffler testified in support of the petition. No one testified in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is located in the 2<sup>nd</sup> Election District on the north side of Manordale Lane, about 850 feet east of St. John's Lane .It is identified as Tax Map 24, Block 17, Parcel 421 and is also known as 9012 Manordale Lane (the "Property").



2. The 38,158-square foot (.88 acres), generally rectangular Property is part of the St. John Manor subdivision. The front lot line is about 108 feet wide, the rear, about 103 feet wide. The northeast side lot line runs about 412 feet deep. The southwest lot line runs about 348 feet deep. It is improved by a 1½-story, single-family detached dwelling fronting on Manordale Lane and sited in the Property's front area. A 25' by 30' two-car garage attached to the dwelling's front is situated some 38.4 feet from the Manordale Lane ROW and 10.8 from the western side lot line. A small shed is situated near the northwest side lot line. A driveway situated near the Property's southeast corner provides access.

3. The Site's perimeter is landscaped with shrubbery. The Property is lightly wooded, except in the rear section, which is more heavily wooded where the land slopes down considerably.

4. Vicinal properties. Adjacent properties are zoned R-20 and are improved with single-family detached dwellings.

5. The Petitioner is requesting a retroactive variance for the garage, which encroaches 11.6 feet into the 50-foot public street ROW.

6. Petitioner's Exhibit 1 includes a copy of a 2001 County building permit to Rick and Linda Flinders for the construction of an attached garage on the Property. The deeds included in this petition indicate that the Flinders purchased the Property in 1996 and sold the Property to Daniel Donovan in 2002, who sold it to the Petitioners in March 2006.

7. Mr. Loeffler testified that the original home was an L-shaped Cape Cod to which former owners added two additions in 2002. Referring to the photographs in Petitioner's Exhibit 1, he testified that the garage's location has caused no safety problems since he has lived there because the road is too straight to limit sight distance. He also stated the survey stakes shown in one photograph indicated that a garage could never have been built on the other side. The



photographs depict the steep slope leading to a stream. In response to questioning, Mr. Loeffler stated that the slope was greater on his property than other area parcels.

### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I conclude the requested variance complies with Section 130.B.2.a and may therefore be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the



property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

2. With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

In the zoning context, the ‘unique’ aspect of a variance requirement *does not refer to the extent of improvements upon the property*, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls.

*North v. St. Mary’s County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994)(italics added).

In this case, the Property's narrowness and rear sloping topography limits the location of any rear or side addition to the dwelling. I therefore conclude the Property's narrowness and topography constitute unique physical conditions. These conditions result in practical difficulties in complying strictly with the setback requirements of the Zoning Regulations for properties within the R-20 zoning district, in accordance with Section 130.B.2.a(1).

3. The granting of the variance will enable the Petitioner to retain the reasonably sized garage addition, which is typically found in the zone. The nature and intensity of the use will not be changed. I therefore conclude the variance, if granted, will not alter the character of the



neighborhood in which the Property is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare as required by Section 130.B.2.a(2).

4. The practical difficulty in complying strictly with the setback regulations arises from the Property's unique shape and the Petitioner did not construct the garage, in accordance with Section 130.B.2.a(3).

5. The size of the garage is a reasonable use, given the Property's uniqueness. The variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).



**ORDER**

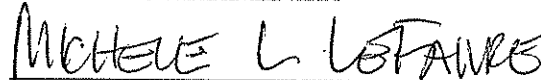
Based upon the foregoing, it is this 5<sup>th</sup> of May 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Matthew and Gail Loeffler for a variance to reduce the 50-foot front setback from a public street right-of-way ("ROW") to 39.4 feet for a garage in an R-20 (Residential: Single) zoning district is **GRANTED**.

**Provided, however, that:**

1. The variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



**Michele L. LeFaivre**

**Date Mailed:** 5/6/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.